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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,407	08/27/2003	Ricky W. Purcell	1443.052US1	6552

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EXAMINER
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PATEL, TARLA R

ART UNIT	PAPER NUMBER
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3772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/10/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/650,407

Applicant(s)

PURCELL, RICKY W.

Examiner

Tarla R. Patel

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11/28/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 15-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/27/03 and 10/29/04</u> .                                    | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. An amendment to the original election/restriction is as follows:

Species B now includes figures 3,4 and 8 as agreed upon on the telephone interview with Patricia Bianco.

Applicant's election of Species B, directed to claims 1-14, without traverse in the reply filed on 11/28/06 is acknowledged.

Claims 15-37 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected election, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/28/06.

### ***Information Disclosure Statement***

2. The Information disclosure statement (IDS) submitted on 8/27/03 and 10/29/04 is acknowledged by Examiner. The IDS meets the requirements of 37 CFR 1.97 and 1.98 and therefore the references there in have been considered.

### ***Claim Rejections - 35 USC § 102***

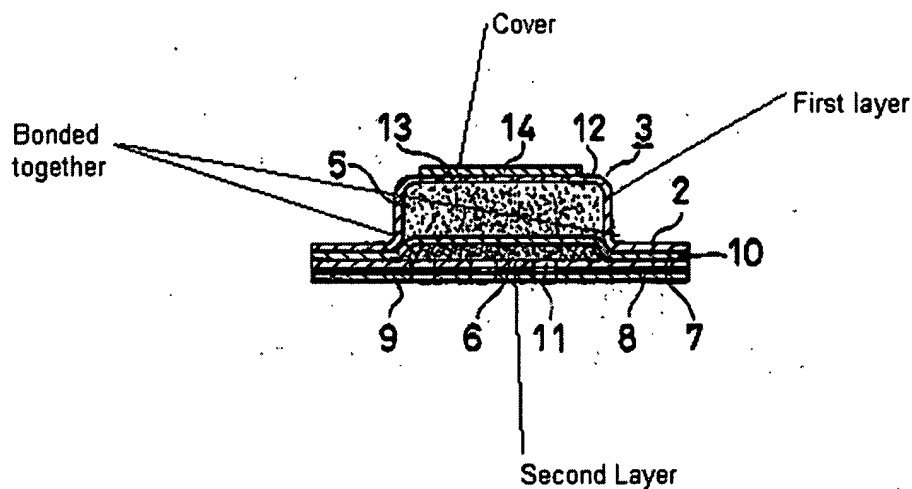
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuratomi (4,747,841).

Kuratomi discloses a heat patch comprising of an enclosure having gas-permeable first layer and second layer bonded together, where in gas permeable first layer includes an inner surface and an outer surface, a pyrogen or heating composition inside the enclosure which generates heat (column 2 lines 28-29) when a gas is received through first layer and a gas-permeable cover that is detachably mounted to said outer surface of first layer (see figure below).



With respect to claim 2 Kuratomi discloses heat patch include heating composition consist iron powder, carbon (reaction promoter), cellulose (water retaining agent), chloride (salt) and water (column 2 lines 14-24).

With respect to claim 3 Kuratomi's heat patch discloses that the first layer is made of gas-permeable or oxygen-permeable (column 2 lines 32-34) material.

With respect to claim 7 Kuratomi discloses a heat patch comprising a heating composition that is capable of generating heat when air is passed through first layer (column 2 lines 28-29).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuratomi in view of Argaud (4,963,360).

Kuratomi substantially disclose the invention, see rejection to claims 1-3 above; however Kuratomi does not disclose a heat patch having a gas-permeable first layer that is polyethylene, a second layer and cover each being made of polyethylene film.

However Argaud teaches a heat patch having gas permeable first and second layers made of polyethylene film (column 2 lines 8-14). At the time of the invention was made, it would have been obvious to one skilled in the art to modify the heat patch of Kuratomi to have polyethylene film gas-permeable first and second layers to have better flow of air to composition and heat to skin being treated of the user, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

It would have also been obvious to one having ordinary skill in the art at the time the invention was made to make the cover of Kuratomi with polyethylene film as taught by Argaud to have better air permeability through it, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

7. Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuratomi in view of Zhang (5,658,583).

Kuratomi substantially disclose the invention, see rejection to claims 1-3 above and also discloses that it maintains the temperature of second layer about 40°C-45°C when composition is exposed to air (column 2 lines 62-64); however Kuratomi does not discloses a heat patch having a cover including a plurality of portions detachably mounted to the outer surface of the first layer as required by claim 8, does not discloses a heat patch having plurality of portions when removed to regulate the variable temperature that is 38-40° or 40-42° or 42-44° of the heat patch as required by claims 9-12.

However Zhang discloses a heat patch with plurality of portions detachably mounted to first layer (31 shown in figure 1) and seals the gas permeable first layer, when plurality of portions removes is able to regulate the temperature of the heat patch by exposing the air to the composition (column 11 lines 7-17). At the time of the invention was made, it would have been obvious to one skilled in the art to modify the heat patch of Kuratomi with multiple portions mounted on the first layer that is taught by Zhang's device to be able to control temperature between 40°C-45°C by removing portions mounted on the first layer of the device to reach desirable temperature to allow more customize treatment of individual by the heat patch.

8. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuratomi and Zhang as applied to claims 8-12 above, further in view of Ingram (5,366,491).

Kuratomi and Zhang substantially disclose the invention, see rejection to claims 8-12 above; however Kuratomi and Zhang do not disclose a heat patch having plurality of portions with information related to heat generated by the heat patch when one or more portions is removed from the first layer.



However Ingram discloses a heat patch with temperature indicating means (20) that includes a liquid crystal temperature-indicating strip (22), which indicates the temperature of the skin (column 4 lines 1-13). At the time of the invention was made, it would have been obvious to one skilled in the art to modify the heat patch of Kuratomi and Zhang to include the temperature indicating strip of the Ingram's heat patch to allow monitoring the use of the heat patch for therapeutic level without damaging the user's skin with higher temperature.

9. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuratomi, Zhang and Ingram as applied to claims 13 above, further in view of Lachenbruch (6,755,852).

Kuratomi, Zhang and Ingram substantially disclose the invention, see rejection to claim 13 above; however Kuratomi, Zhang, and Ingram do not disclose a heat patch having at least some of plurality of portions are different colors, where the different colors give information related to heat generated by the patch, when one or more portions are removed from the first layer.

However Lachenbruch discloses a body wrap for inducing a temperature change. The wrap includes a color-coded temperature indicator on the

outside of the wrap (column 7 lines 23-29); the indication is done by showing color change for temperature. At the time of the invention was made, it would have been obvious to one skilled in the art to modify the heat patch of Kuratomi, Zhang and Ingram to include the color-coded temperature indicator which is taught by Lachenbruch to be able to easily see the temperature change on the skin to have fastest response to remove it if temperature rise above the desirable temperature for therapy.

### ***Conclusion***


10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Usui (5,879,378) discloses a heat patch with gas-permeable made of polyethylene material, composition made of metal powder, carbon powder, metallic chloride and water. Composition generates heat by exothermic method.

Kunamoto (2006/0276863) discloses a warming tool with color change when there is change in the temperature of the pad.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tarla R. Patel whose telephone number is 571-272-3143. The examiner can normally be reached on M-F 6-3.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
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1/5/07

TP